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September 23, 2010

Ex Parte

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, RM-10593

Dear Ms. Dortch:

Yesterday, Edward Shakin and I met with Zachary Katz, Legal Advisor to Chairman Genachowski, as well as, Sharon Gillett, Nicholas Alexander and Jennifer Prime of the Wireline Competition Bureau to discuss special access issues. The discussion was consistent with Verizon's comments and ex partes in this proceeding. Specifically, we explained that ILECs face substantial competition in the provision of high capacity services, and that the prices customers pay for Verizon's special access services have steadily declined under the existing pricing flexibility regime. We also explained that Verizon offers numerous special access discount plans to meet the needs of many different types of customers, and explained why these plans are not anti-competitive. The attached presentation was handed out during the meeting.

Sincerely,

A handwritten signature in black ink that reads "Donna Epps".

cc: Zachary Katz
Sharon Gillett
Nicholas Alexander
Jennifer Prime

Attachment

ATTACHMENT

Special Access

Special Access is Only One Type of High Capacity Service



- **Special access is one name used for a point-to-point high capacity circuit from a customer's premises to another carrier's network (or to another customer's premise).**
- **Special access circuits do not use a switch. They are dedicated facilities.**
- **Special access is only one type of high capacity service. Cable, fixed wireless and CLECs offer high capacity services as well but may not call them special access. Rather, they may call them private line, metro private line, data transport, dedicated connections or simply high capacity services.**

The FCC Already Regulates Special Access Services

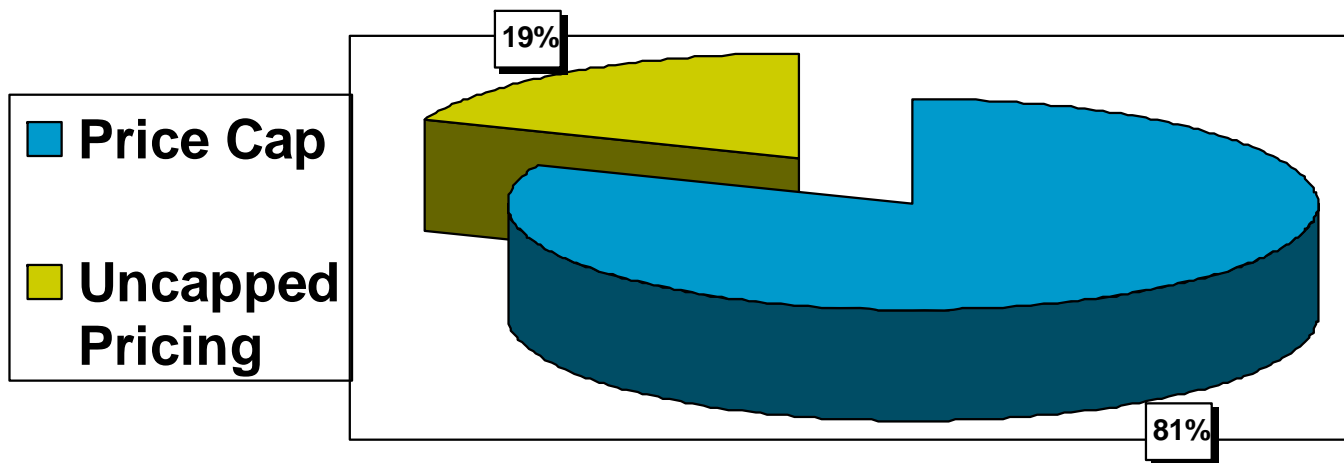


- All ILECs' interstate special access services are sold through federal tariffs. Section 201's just and reasonable standard applies.
- Price cap ILECs offer special access services by tariff under three types of regulation within the Section 201 framework:
 - Price caps with the ability to offer generally available discounts but not individualized contracts.
 - Contract pricing (Phase I flexibility) where special access services remain subject to price caps but ILECs are able to offer discounts through individualized contracts.
 - Uncapped pricing (Phase II flexibility), where in addition to the ability to offer individualized contracts, special access services are not subject to the price caps.
- In order to obtain pricing flexibility relief, a price cap ILEC must demonstrate that certain competitive triggers are met. These triggers are collocation based and do not capture non-collocators. Verizon has not sought additional relief since January 2005.

In Most Areas, Verizon's Last Mile Facilities Are Still Subject to Price Caps



Percent of MSAs for "Last Mile" Special Access Services



Many of Verizon's competitive service areas such as New York, Boston, Washington DC, Philadelphia and Los Angeles remain subject to price caps for last mile facilities.

The preponderance of regulation is even *higher* when measured on a population basis, with 83% of the population in Verizon wireline serving areas living in MSAs that still are subject to price cap regulation for last mile connections.

Many Types of Competitive Providers Offer Alternatives to ILEC Special Access Services



PAETEC

at&t



An Evolving Marketplace is Spurring More and Newer Types of Competition



- The high capacity marketplace is rapidly changing: demand is exploding as a result of wireless backhaul and increasing data needs by business customers.
- The marketplace is experiencing a migration from legacy DS1 and DS3 to other technologies and higher capacity services.
- This migration is spurring more and new types of competition
 - Ethernet
 - Cable
 - Fixed wireless and microwave
 - Traditional wireline competition

XO/Nextlink provides “a high speed wireless alternative to local copper and fiber connections, utilizing licensed wireless spectrum.” XO/Nextlink’s “primary target customers are mobile wireless and wireline telecommunications carriers, large commercial enterprises and government agencies” and XO/Nextlink “currently offers wireless backhaul, network extensions, network redundancy and diversity services.” XO Holdings Inc., Form 10-Q at 11 (March 31, 2009).

[Clearwire’s Chief Technology Officer] Saw said that 90% of Clearwire’s cell sites are connected via wireless backhaul links, providing 30 Mb/s or greater capacity—bandwidth that would require the provisioning of 20 T1 lines or more to achieve via standard copper connections. While incumbent wireline operators are making greater strides in extending fiber and Ethernet to the tower to support coming 4G networks, the pace isn’t fast enough, Saw said. Connected Planet, *Clearwire leans heavily on wireless to backhaul WiMax network*, <http://connectedplanetonline.com/3g4g/news/clearwire-wireless-backhaul-wimax-0914/>

Earl Ipsaro, Fibertech’s Vice President of Engineering, said that “Fibertech is right in the game when it comes to 3G backhaul. We are providing traditional TDM services – T1s to cell towers – as well as next-generation Ethernet. We have also worked with some carriers on the 4G rollout.” Exchange Magazine (July 16, 2009)

Cable Providers are Competing Successfully in the High Capacity Marketplace



- Even in an economic downturn, cable providers are able to invest and successfully grow their high capacity business.
- Cable providers are uniquely positioned to offer backhaul to wireless carriers because they have extensive networks.
- Cable providers are making major inroads in the small and medium business segments.

Cablevision's Chief Operating Officer, Tom Rutledge, estimated at a Goldman Sachs conference that "the commercial business in its footprint is worth nearly \$6 billion." He added that... "Cablevision already has fiber service to twice as many buildings in its Metropolitan New York footprint than incumbent phone company Verizon Communications."

[http://www.multichannel.com/article/125275-Cablevision Eyes Commercial Phone.php](http://www.multichannel.com/article/125275-Cablevision+Eyes+Commercial+Phone.php)

"Moving on to business services, we continue to have strong momentum in this business. We are now generating over \$1B in annual run rate revenue and we continue to drive strong growth rates in the 40% to 50% range. At the same time, we are growing our [cell] backhaul business and are putting the building blocks in place for the medium-sized business market."

Steve Burke - Comcast Corp. – Chief Operating Officer of Comcast Cable Communications, Q1 2010 Comcast Corporation Earnings Conference Call, April 28, 2010

By 2009, Cox had already received commercial services revenues of \$985 million, up 15% from \$853 million in 2008, and Cox executives predicted that Cox would "definitely hit \$1 billion [in commercial services revenues] in 2010."

Communications Daily, *Big Cable Operators Expect Large Commercial Service Revenue Gains* (Jan. 5, 2010)(citing Cox Business Vice President Phil Meeks).

In Addition to Traditional CLECs, There are Many Alternatives to ILEC Special Access for Backhaul Services



Fixed wireless providers are competing successfully for wireless backhaul and are particularly well positioned in rural areas.

- “We delivered strong year-over-year top line growth in the second quarter of 2010,” said Kurt Van Wagenen, FiberTower’s president and chief executive officer. “In addition, our revenue growth rate accelerated on a sequential basis from the first quarter to the second quarter. Sales momentum continued to be strong, and we have already sold more in the first half of 2010 than in all of 2009. We expect revenue to ramp further in the second half of the year as we turn up business booked in the first two quarters and pursue the robust backhaul opportunities we are seeing.” FiberTower 2Q Results August 5, 2010, http://www.fibertower.com/corp/downloads/press_releases/10-08-05%20FTWR%20Q210%20Earnings%20Release%20FINAL.pdf
- XO/Nextlink “currently offers wireless backhaul, network extensions, network redundancy and diversity services.” XO Holdings Inc., Form 10-Q, http://www.xo.com/SiteCollectionDocuments/aboutxo/investor-relations/Annual_Reports/XOH_1Q_2009_10Q.pdf, at 11 (March 31, 2009).
- “[W]e don’t have a problem with back haul because we’re using 300 MIP microwave off of those cell sites, so I’ve got plenty of back haul capacity to go back.” Stelera Wireless, FCC National Broadband Plan Workshop, Wireless Broadband Deployment – General Transcript, http://www.broadband.gov/docs/ws_03_deploy_wireless_transcript.pdf, at 42-43 (Aug. 12, 2009).

Cable providers are successfully targeting wireless providers to meet their backhaul needs.

- Cox has indicated that it’s prepared to provide backhaul services to wireless providers deploying their 4G networks “because we’re there and we can do sort of spurs off of our network” and “we’re deploying capital to that area to be able to satisfy that demand.” FCC National Broadband Plan Workshop, Wireless Broadband Deployment –General, Transcript, http://www.broadband.gov/docs/ws_03_deploy_wireless_transcript.pdf, at 35 (Aug. 12, 2009).
- “[W]ireless backhaul,” has become Time Warner Cable’s fastest-growing business after revenue tripled last year,” said Craig Collins, senior vice president of business services... “Backhaul is a growth play that we are pursuing aggressively,” Collins said. “These mobile players want to get the bandwidth they need at a cost-effective price and our structure allows them to get that pretty seamlessly.” Ohio.com, *Cable looks to ease smartphone jams; Time Warner pitches wireless backhaul service to AT&T, Verizon in bid to expand market*, <http://www.ohio.com/business/87609542.html>, Mar 14, 2010

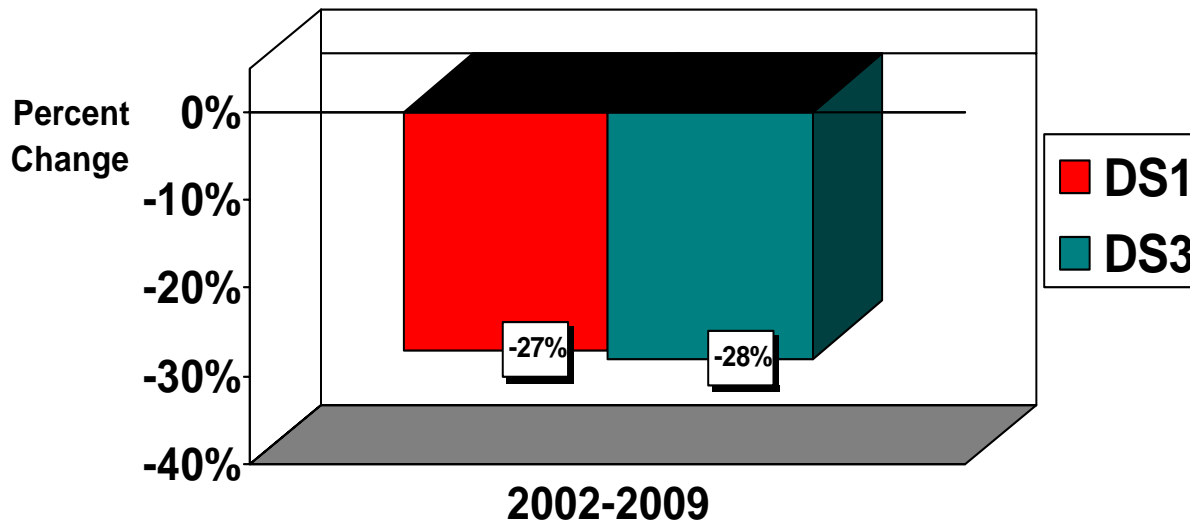
Emerging technologies are also surfacing. For example, SkyFiber, Inc. is offering new fixed wireless backhaul based on a laser technology. According to SkyFiber, this technology “is an excellent and innovative option to address certain middle mile, second mile, ‘next’ mile and backhaul needs in wireline and wireless networks.” Letter from Catherine Wang, SkyFiber, to Marlene Dortch, FCC, A National Broadband Plan for Our Future, GN Docket No. 09-51, at 1-2 (filed Dec. 11, 2009).

The Prices that Customers Pay for Special Access Services Have Declined



Special access DS1 and DS3 rates that customers pay Verizon declined by 27 and 28 percent in real terms, respectively, between 2002 and 2009.

Sprint's Chief Technology Officer said that T-1 lines, the most common type of high-capacity connection to cell sites, are "[r]elatively abundant and inexpensive" in the United States. s. Lawson, *Sprint Picks Wireless Backhaul for WiMAX*, Industry Standard (July 9, 2008)(citing Sprint CTO Barry West).



Don McCullough, Ericsson's head of marketing for IP Broadband, told Total Telecom that "[i]n the U.S. the ability to lease T1s has retarded microwave: it's always been less expensive to lease T1s." Anne Morris, Total Telecom, *Microwave to Retain Key Role In Wireless Backhaul, As Fibre Waits In Wings* (Sept. 2, 2009).

Verizon Offers Different Types of Discount Plans and Contracts that Meet a Variety of Customer Needs



- **Verizon offers numerous, generally available discount plans that provide customers with steep discounts of up to 67% off of Verizon's rack rates. These tariffed plans are available in all of Verizon's service areas and customers can choose the type of plan that best meets their needs.**
- **Typically, Verizon's discounts are based on term or a combination of volume and term. Customers are not required to commit to long terms or large volumes. Customers are not required to purchase all of their special access services from Verizon.**
- **Verizon also offers individualized contracts where Verizon has obtained pricing flexibility relief. These contracts are negotiated and can provide additional discounts.**
 - **Each contract, which is filed in tariffs, is open to all customers that meet the terms and conditions of the specific contract. ILECs cannot favor their affiliates.**

Customers Benefit from Verizon's Discount Offers



- **When a customer agrees to a term or volume commitment in exchange for a greater discount, termination liability and shortfall penalty assure that the service provider also gets the benefit of the bargain if the customer terminates prior to the agreement's expiration or fails to fulfill a volume commitment.**
- **In the event that a customer is unable to meet its volume commitment, the customer still retains a significant portion of the discounts it received and simply makes a shortfall payment that is typically the difference between what the customer actually paid, and what the customer would have paid if the customer satisfied the volume commitment.**
- **Generally, in the event that a customer exits one of Verizon's discount plans early, the customer would still retain a significant portion of the discounts it received for participating in the plan for the actual time in service under the plan.**

Service Specific Rates of Return are Based on Arbitrary Allocations Rather than Actual Results



- **Economists have rejected the use of ARMIS Data to calculate costs of a specific service like special access. This is because special access services are provided over some shared network elements, and it is impossible to isolate special access costs in a non-arbitrary manner.**
- **The FCC has long recognized that ARMIS data “do[] not serve a ratemaking purpose.”**
- **Advocates of ARMIS results ignore the fact that ARMIS rates of return for other service groups are *negative*.**

Additional Regulation of Special Access Could Undermine a Growing Market



- “Given the extensive record evidence of vigorous competition to provide high-capacity services and significant declines in the prices for those services, IBEW strongly urges the Commission to close this proceeding without imposing additional regulation on high-capacity services. However, if the Commission is not inclined to close this proceeding, the significant consequences of imposing additional regulation require that the Commission ensure that it has comprehensive information concerning the state of competition in the high capacity services marketplace before undertaking any additional regulation of high-capacity services.” (IBEW, Ex Parte Letter to FCC, May 28, 2009).
- “Those who would be hurt by rate cuts on DS-1s and possibly on DS-3s would be cable companies and fixed wireless providers who are just entering the wholesale market, are using their own facilities, and would have to operate under a lower price umbrella.” (Anna Maria Kovacs, Special Access Report from NRRI, January 26, 2009).
- “We support continuation of the Commission’s near decade-old policy to permit pricing flexibility and oppose re-instating price regulation because allowing pricing flexibility helps stimulate broadband investment, while reinstating price regulation could dampen the incentive of telephone companies to invest further in their networks thereby possibly slowing the deployment of broadband services. For obvious reasons, the investment disincentive created by re-imposition of stringent price regulation would be especially great in the present recessionary economic climate.” (Letter of Ad Hoc Telecom Manufacturer Coalition to FCC, filed in Docket No. 05-25 on April 3, 2009).

The FCC Should Have All the Facts Before Taking Action on Special Access



- **Misplaced regulation in a healthy marketplace will harm investment and deter entry.**
- **Accordingly, the FCC should not impose any additional regulation without a specific finding that the marketplace is broken.**
- **The FCC needs to collect additional comprehensive data from competitive providers before taking action short of closing the special access proceeding.**
- **The FCC should collect data in accordance with the Verizon and US Telecom proposal rather than compare special access prices to UNEs or ARMIS-based results.**